

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
COMMUNITY CARE LICENSING DIVISION
CALIFORNIA CODE OF REGULATIONS, TITLE 22, DIVISION 6, CHAPTER 8

Sections Affected in California Code of Regulations, Title 22, Division 6, Chapter 8:
87224 and 87412

Justification for Changes Without Regulatory Effect:

Pursuant to Title 1, Division 1, Chapter 1, Article 2, section 100(b)(3), of the California Code of Regulations (CCR), the California Department of Social Services (Department) hereby submits this written statement explaining why the proposed amendments to CCR, Title 22, Division 6, Chapter 8, sections 87224 and 87412 do not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any CCR provision. This package meets the standard as set forth under CCR, Title 1, Division 1, Chapter 1, Article 2, section 100(a)(6) concerning revisions due to a changed California statute.

CCR, Title 22, section 87224 is being amended to reflect changes made by Health and Safety Code (HSC) section 1569.682(a)(2), which requires, among other things, a Residential Care Facility for the Elderly (RCFE) licensee to “Provide each resident or the resident’s responsible person with a written notice no later than 60 days before the intended eviction...” due to change of use of the facility.

Associated handbook reference is being added to CCR, Title 22, section 87224 for the purpose of clarity, consistency, and ease of access by the Licensing Program Analysts who are responsible for monitoring licensee compliance of laws and regulations for RCFEs and our regulated community. Providing statute as handbook reference is at the discretion and formatting preference/style of the Department.

CCR sections referenced in CCR, Title 22, Section 87412 are inaccurate and have been revised to reflect correct section cross-references.

Section 87224(a)

Proposed Change:

Amend regulation to make clear which reasons are permissible to evict a resident upon 30 days written notice and to add reference to “no less than sixty (60) days written notice requirement” for an eviction that is due to change of use of the facility that is specified in paragraph (5).

- (a) The licensee may evict a resident for one or more of the reasons listed in Section 87227(a)(1) through (5). ~~upon thirty~~ Thirty (30) days written notice ~~to the resident, evict the resident for one or more of the following~~

reasons: to the resident is required except as otherwise specified in paragraph (5).

Section 100 Justification:

The proposed language is added to make regulations consistent with statute. As specified in HSC section 1569.682(a)(2), a licensee of an RCFE must “Provide each resident or the resident’s responsible person with a written notice no later than 60 days before the intended eviction...” for an eviction that is due to change of use of the facility.

Pursuant to CCR, Title 1, section 100(a), an agency may add to text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the Administrative Procedure Act (APA) only if the change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. This qualifies as a CCR, Title 1, section 100(a)(6) change regarding making a regulatory provision consistent with a changed California statute. The adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

Section 87224(a)(5)(A)

Proposed Change:

Add regulation that specifies that an RCFE licensee must provide a resident or the resident’s responsible person written notice no later than 60 days before the intended eviction if the eviction is due to change of use of the facility. This requirement must be differentiated from other eviction notice requirements, which require 30 days written notice.

(A) The licensee may, upon no less than sixty (60) days written notice, evict a resident due to change of use of the facility.

Section 100 Justification:

The proposed language is added to make regulations consistent with statute. As specified in HSC section 1569.682(a)(2), a licensee of an RCFE must “Provide each resident or the resident’s responsible person with a written notice no later than 60 days before the intended eviction...” when the eviction is due to change of use of the facility.

Pursuant to CCR, Title 1, section 100(a), an agency may add to text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the Administrative Procedure Act (APA) only if the change does not materially alter any requirement, right, responsibility,

condition, prescription, or other regulatory element of any California Code of Regulations provision. This qualifies as a CCR, Title 1, section 100(a)(6) change regarding making a regulatory provision consistent with a changed California statute. The adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

Section 87224(a)(5)(A)1.

Proposed Change:

Add regulation that specifies notice requirements for an RCFE licensee evicting a resident due to change of use of the facility. Reference is also added to HSC section 1569.682(a)(2)(A) through (F) which specifies the specific notice requirements.

1. In addition to written notice to quit requirements specified in Section 87224(d), written notice to evict due to change of use of the facility shall be made to the resident or the resident's responsible person and shall include all requirements specified in Section 1569.682(a)(2)(A) through (F) of the Health and Safety Code.

Section 100 Justification:

The proposed language is added for clarity and to make the regulations consistent with statute. HSC section 1569.682(a)(2)(A) through (F) provides specific written notice requirements for an eviction that is due to change of use of the facility. These requirements are in addition to current regulatory notice to quit requirements specified in CCR, Title 22, section 87224(d)(1)(A) through (D).

Pursuant to CCR, Title 1, section 100(a), an agency may add to text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. This qualifies as a CCR, Title 1, section 100(a)(6) change regarding making a regulatory provision consistent with a changed California statute. The adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

Section 87224(a)(5)(A)1. - HANDBOOK

Proposed Change:

Add handbook reference HSC section 1569.682(a)(2)(A) through (F), which provides specified written notice requirements when an RCFE licensee is evicting a resident due to change of use of the facility.

HSC section 1569.682(a)(2)(A) through (F) provides:

“(a) A licensee of a licensed residential care facility for the elderly shall, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of the forfeiture of a license, as described in subdivision (a), (b), or (f) of Section 1569.19, or a change of use of the facility pursuant to the department’s regulations, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma, and shall, at a minimum, do all of the following:

(2) Provide each resident or the resident’s responsible person with a written notice no later than 60 days before the intended eviction. The notice shall include all of the following:

(A) The reason for the eviction, with specific facts to permit a determination of the date, place, witnesses, and circumstances concerning the reasons.

(B) A copy of the resident’s current service plan.

(C) The relocation evaluation.

(D) A list of referral agencies.

(E) The right of the resident or resident’s legal representative to contact the department to investigate the reasons given for the eviction pursuant to Section 1569.35.

(F) The contact information for the local long-term care ombudsman, including address and telephone number.

Section 100 Justification:

The proposed handbook language is added for clarity, consistency, and ease of access by the Licensing Program Analysts who are responsible for monitoring licensee compliance of laws and regulations for RCFEs and our regulated community. Providing statute as handbook reference is at the discretion and formatting preference/style of the Department. HSC section 1569.682(a)(2)(A) through (F) provides specific written notice requirements for an eviction that is due to change of use of the facility. These requirements are in addition to current regulatory notice to quit requirements specified in CCR, Title 22, section 87224(d)(1)(A) through (D).

Pursuant to CCR, Title 1, section 100(a), an agency may add to text published in the California Code of Regulations without complying with the rulemaking

procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. This qualifies as a CCR, Title 1, section 100(a)(6) change regarding making a regulatory provision consistent with a changed California statute. The adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

Section 87224(c)

Proposed Change:

Amend regulation to be consistent with statute, clarifying that an RCFE licensee must notify or mail a copy of the notice to quit in any eviction, no matter the reason for the eviction.

- (c) The licensee shall, in addition to either serving the required thirty (30) days notice, sixty (60) days notice, or seeking approval from the Department and serving three (3) days notice on the resident, notify or mail a copy of the notice to quit to the resident's responsible person.

Section 100 Justification:

The proposed language is added to make regulations consistent with statute, clarifying that an RCFE licensee must notify or mail a copy of the notice to quit in any eviction, no matter the reason for the eviction.

Pursuant to CCR, Title 1, section 100(a), an agency may add to text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the Administrative Procedure Act (APA) only if the change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. This qualifies as a CCR, Title 1, section 100(a)(6) change regarding making a regulatory provision consistent with a changed California statute. The adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

Section 87412(a)(6)(A)

Proposed Change:

Amend regulation to correct an inaccurate cross-reference.

- (a) The licensee shall ensure that personnel records are maintained on the licensee, administrator and each employee. Each personnel record shall contain the following information:
 - (6) Educational background.
 - (A) For administrators this shall include verification that he/she meets the educational requirements in Section 87405(b) and ~~(c)~~ (d) through (g).

Section 100 Justification:

The regulation is amended to correct an inaccurate cross-reference. CCR, Title 22, section 87405(d) through (g) provides the correct cross-reference related to RCFE administrator educational requirements. CCR, Title 22, section 87405(b) and (c) addresses issues related to administrator authority to carry out the policies of the license and that failure to comply, as specified, may constitute cause for license revocation. In addition, the word "Section" has been added for grammatical purposes.

Pursuant to CCR, Title 1, section 100(a), an agency may add to text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the Administrative Procedure Act (APA) only if the change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. This qualifies as a CCR, Title 1, section 100 change because it is revising an inaccurate cross-reference.

Section 87412(a)(13)

Proposed Change:

Amend regulation to correct a typographical error.

- (13) For employees that are required to be fingerprinted pursuant to Section ~~80355~~ 87355, Criminal Record Clearance:

Section 100 Justification:

The proposed language is added to correct a typographical error. Criminal Record Clearance is the title of CCR, Title 22, section 87355, not CCR, Title 22, section 80355.

Pursuant to CCR, Title 1, section 100(a), an agency may add to text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the Administrative Procedure Act (APA) only if the change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. This qualifies as a CCR, Title 1, section 100 change because it is revising an inaccurate cross-reference.

Section 87412(b)(1) through (2)

Proposed Change:

Amend regulations to correct inaccurate cross-references.

- (b) Personnel records shall be maintained for all volunteers and shall contain the following:
 - (1) A health statement as specified in Section 87411~~(e)~~(f).
 - (2) Health screening documents as specified in Section 87411~~(e)~~(f).

Section 100 Justification:

The proposed language is added to correct inaccurate cross-references. Both the health statement and health screening identified in CCR, Title 22, section 87412(b)(1) through (2) are specified in CCR, Title 22, section 87411(f), not CCR, Title 22, section 87411(e). CCR, Title 22, section 87405(e) addresses administrator education requirements, as specified.

Pursuant to CCR, Title 1, section 100(a), an agency may add to text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the Administrative Procedure Act (APA) only if the change does not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element of any California Code of Regulations provision. This qualifies as a CCR, Title 1, section 100 change because it is revising an inaccurate cross-reference.